

REPORT BY THE  
AUDITOR GENERAL  
OF CALIFORNIA

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A REVIEW OF THE STATE BAR OF CALIFORNIA'S  
PROCESSING OF COMPLAINTS AGAINST ATTORNEYS  
ACCUSED OF MISUSING CLIENT TRUST FUNDS

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P-716

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ACCUSED OF MISUSING CLIENT TRUST FUNDS

JUNE 1988



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Thomas W. Hayes  
Auditor General

June 22, 1988

P-716

Honorable Bruce Bronzan, Chairman  
Members, Joint Legislative  
Audit Committee  
State Capitol, Room 448  
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the State Bar of California's failure to resolve promptly complaints against attorneys accused of misusing their clients' funds and to ensure that eligible clients whose attorneys have misused trust funds are made aware of the availability of the Client Security Fund.

Respectfully submitted,

*Thomas W. Hayes*  
for  
THOMAS W. HAYES  
Auditor General

## TABLE OF CONTENTS

	<u>Page</u>
<b>SUMMARY</b>	S-1
<b>INTRODUCTION</b>	1
<b>AUDIT RESULTS</b>	
I    THE STATE BAR OF CALIFORNIA HAS NOT MET ITS GOAL OF RESOLVING COMPLAINTS WITHIN SIX MONTHS OF FILING	7
CONCLUSION	17
RECOMMENDATIONS	18
II   THE STATE BAR OF CALIFORNIA COULD HAVE DONE MORE TO ENSURE THAT POTENTIAL CLAIMANTS FILED FOR REIMBURSEMENT FROM THE CLIENT SECURITY FUND	19
CONCLUSION	22
RECOMMENDATION	23
<b>APPENDICES</b>	
A    THE DISCIPLINE PROCESS OF THE STATE BAR OF CALIFORNIA	25
B    THE NUMBER OF INQUIRIES AND COMPLAINTS RECEIVED BY THE STATE BAR OF CALIFORNIA AND THE TIME REQUIRED TO PROCESS COMPLAINTS	29
<b>RESPONSE TO THE OFFICE OF THE AUDITOR GENERAL'S REPORT</b>	
The State Bar of California	33
<b>THE OFFICE OF THE AUDITOR GENERAL'S COMMENTS ON THE RESPONSE OF THE STATE BAR OF CALIFORNIA</b>	37

## SUMMARY

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### RESULTS IN BRIEF

The State Bar of California (State Bar) regulates law practice in California. Within this regulatory authority, the State Bar may recommend discipline for attorneys who have committed acts of professional misconduct, including misusing their clients' funds. During our review of the State Bar's regulation of client trust funds, we noted the following:

- From 1984 through 1986, the State Bar did not resolve promptly complaints against attorneys accused of misusing their clients' funds. Although the State Bar established a goal of resolving these complaints within six months of filing, it did not meet this goal for 1,494 (54 percent) out of 2,758 complaints filed during this period.
- The State Bar could have done more to ensure that eligible clients whose attorneys have misused trust funds filed claims for reimbursement from the Client Security Fund.

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### BACKGROUND

Under the State Bar Act, the State Bar has the authority to investigate complaints of unprofessional conduct against attorneys who are members of the State Bar. The board of governors of the State Bar has established rules of professional conduct that prohibit members from misusing funds entrusted to them. Since the State Bar is responsible for enforcing these rules, it has the authority to discipline attorneys found guilty of misusing funds entrusted to them. The State Bar also has established the Client Security Fund to reimburse clients whose attorneys have misused

funds entrusted to them. Appendix A presents an overview of the State Bar's discipline process, and Appendix B details the number of complaints that the State Bar received in 1987 and the time that the State Bar has required to process them.

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## PRINCIPAL FINDINGS

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### The State Bar of California Has Not Met Its Goal of Resolving Complaints Within Six Months of Filing

From January 1, 1984, through December 31, 1986, the State Bar was slow in resolving complaints against attorneys accused of misusing their clients' trust funds. For 1,494 (54 percent) of these claims, the State Bar did not achieve its goal of processing complaints within six months of their being filed.

When the State Bar delays resolving complaints against attorneys, the public can make uninformed decisions about hiring attorneys, and some dishonest attorneys continue to practice law. Administrators of the State Bar have stated that heavy caseloads have caused delays in resolving complaints. In 1986, the State Bar received 46 new positions to address the backlog of complaints. However, it still has been unable to meet its six-month goal because it also lacks an effective case management system for ensuring that it processes cases promptly.

To correct deficiencies in processing and resolving complaints against attorneys, the State Bar has developed and implemented some of the elements of a case management system, including a computerized system to inform management of which staff are assigned cases. The State Bar has also reorganized the process for receiving complaints within the Office of Investigations and the Office of Trial Counsel and has added additional staff to investigate complaints.

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The State Bar of California Could Have  
Done More To Ensure That Potential  
Claimants Filed for Reimbursement  
From the Client Security Fund

The State Bar has not referred to the Client Security Fund (fund) some potential claimants whose attorneys have misused trust funds. Of the 48 cases that we reviewed, the fund paid claims to 12 claimants. However, the State Bar had not informed 7 of the 12 claimants of the availability of the fund. As a result, the 7 claimants did not file for reimbursement until after the accused attorney had already been disciplined or had died or resigned. If the 7 claimants had filed claims at the time that the State Bar's recommended discipline had become effective, an average of ten months before these claimants filed, the claimants could have been paid ten months earlier. The State Bar has established a policy to notify potential claimants who complain that their attorneys have misused trust funds of the availability of the Client Security Fund.

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**RECOMMENDATIONS**

To ensure that the State Bar does not delay resolving complaints, the State Bar should set specific deadlines for processing complaints alleging misuse of clients' trust funds and continue to implement a case management system to monitor the processing of complaints.

To ensure that potential claimants are notified of their eligibility for reimbursement from the Client Security Fund, the State Bar should inform clients of the availability of the fund when they file complaints that attorneys have misused their funds.

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**AGENCY COMMENTS**

The State Bar points out that it has improved its systems for processing complaints since 1986. However, the State Bar disagrees with our finding that its case management system is incomplete because it still does not have procedures for ensuring that staff meet deadlines within the required time during the processing of complaints. The State Bar also states that it has implemented standard procedures for notifying complainants of the availability of the Client Security Fund.

## INTRODUCTION

The State Bar of California (State Bar) is a public corporation that regulates the legal profession involving more than 100,000 attorneys in the State. Attorneys must be active members of the State Bar to practice law in California.

The State Bar is governed by a board of governors, consisting of the president of the State Bar and 22 members who represent geographical districts of the State. Six are public members (nonattorneys) appointed by the governor, the speaker of the Assembly, and the Senate Committee on Rules. The rest of the members of the board of governors are elected from among the membership of the State Bar.

For calendar year 1988, the State Bar's budget includes expenditures and reimbursements of \$25,947,000 from its general fund. This is an increase of about \$2,243,000 (9.5 percent) over 1987. For 1988, the State Bar expects revenues of \$23,238,000 from membership fees. Membership fees, which are assessed based on the length of time that attorneys have practiced law, provide the principal funding for the State Bar's activities. Currently, the State Bar assesses dues of \$176 per year for attorneys who have practiced for less than one year, \$207 for those who have practiced up to three years, \$275 for attorneys who have been practicing for more than three years, and \$50 per year

for inactive members of the State Bar. The State Bar also assesses dues to fund special activities such as the Client Security Fund, which reimburses clients who lose money as a result of an attorney's dishonest conduct.

The State Bar is responsible for examining the qualifications of applicants for membership in the State Bar. In addition, the State Bar's duties include regulating attorney referral services, improving the quality and availability of legal services, and educating the public. Finally, under the jurisdiction of the Supreme Court of California, the State Bar is responsible for enforcing the rules of professional conduct and thus has the authority to impose public and private reprimands. It also recommends discipline to the Supreme Court of California for attorneys guilty of serious professional misconduct, including the misuse of their clients' funds. The State Bar investigates complaints of misconduct, prepares cases against attorneys when reasonable cause exists to believe that an attorney has violated the law or rules of professional conduct, and recommends various forms of discipline including censures, suspensions, and disbarments.<sup>1</sup>

Recently, the State Bar's system for disciplining attorneys who have committed acts of professional misconduct has received

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<sup>1</sup>Appendix A summarizes the State Bar's definition of reasonable cause.

criticism from the Legislature. As a result, Chapter 1114 of the Statutes of 1986 required the state attorney general to appoint a monitor to evaluate the State Bar's disciplinary systems and procedures. The monitor has provided the Legislature with an initial report entitled "A Report on the Performance of the Disciplinary System of the State Bar" and two subsequent reports describing deficiencies in the State Bar's discipline process.

The monitor reported that salaries for investigators in the State Bar's discipline system were too low and that their caseloads were too high. He also reported that the State Bar is incapable of handling serious or complex investigations because it is overburdened by the backlog of complaints. Finally, he said that the State Bar needed a special unit of investigators and attorneys to handle complicated cases.

#### SCOPE AND METHODOLOGY

The purpose of this report was to provide information about the State Bar's investigation of complaints against attorneys accused of misconduct, particularly the misuse of client funds held in trust by attorneys. We reviewed records to determine the number of inquiries that the State Bar has received about attorneys and the number of complaints about the misuse of funds that the State Bar has investigated. To determine whether the State Bar unnecessarily delayed

the processing of complaints, we reviewed the State Bar's investigations of complaints alleging misused trust funds, and we analyzed the time required to complete these investigations. Finally, we reviewed the Client Security Fund to determine if the State Bar has paid claims as quickly as possible.

To determine the number of complaints that the State Bar investigated alleging that attorneys misused funds entrusted to them, we reviewed data from the State Bar's computer system, and we reviewed samples of complaints to ensure that data were correctly coded in the computer system.

To determine if the State Bar delayed the processing of complaints that allege attorneys misused their clients' funds, we first selected a random sample of 131 of the 2,758 complaints filed from January 1, 1984, through December 31, 1986. We then reviewed the files of the 131 complaints, calculating the number of days that the State Bar took to resolve the complaints and noting time periods when the files indicated that no work was done. In addition, we reviewed the State Bar's policies and procedures for resolving complaints, and we interviewed State Bar investigators, attorneys, and management staff to discuss the delays that we found.

We also reviewed all of the complaints associated with the cases of two attorneys whom the State Bar has recommended be prohibited from practicing law to determine if delays occurred in the processing of the complaints. We then calculated how much sooner the attorneys could have been disciplined if the delays had not occurred.

To determine whether the State Bar's Client Security Fund pays claims for reimbursement as quickly as possible, we reviewed 48 files of clients who have accused their attorneys of misusing trust funds. For 10 of 12 claims that the State Bar paid, we interviewed the claimants or their new attorneys to determine when they filed their claims, when the State Bar paid the claims, and how the claimants learned of the availability of the fund. We also interviewed officials of the State Bar, and we reviewed the State Bar's policies and procedures for reimbursing clients whose attorneys misused funds.

## AUDIT RESULTS

### I

THE STATE BAR OF CALIFORNIA  
HAS NOT MET ITS GOAL OF RESOLVING  
COMPLAINTS WITHIN SIX MONTHS OF FILING

From January 1, 1984, through December 31, 1986, the State Bar of California (State Bar) was slow in resolving complaints against attorneys accused of misusing their clients' funds. For 1,494 (54 percent) out of 2,758 complaints filed during this period, the State Bar did not achieve its goal of processing the complaints within six months of the claims being filed. Furthermore, for a random sample of 131 complaints opened during that period, the State Bar did no work on 64 (49 percent) for at least 90 consecutive days. When delays occur, attorneys are not disciplined promptly and may continue to practice law despite their misuse of clients' funds. In addition, without prompt resolution of accusations, the public cannot make informed decisions about hiring attorneys who are accused of misconduct, and people may hire attorneys whom the State Bar may later prohibit from practicing law.

Section 6076 of the Business and Professions Code (part of the State Bar Act) allows the board of governors of the State Bar to formulate and enforce rules of professional conduct for all members of the State Bar. Rule 8-101 of the State Bar's Rules of Professional Conduct prohibits members from misusing funds entrusted to them. The State Bar defines the misuse of trust funds as not depositing the funds

in a trust account properly, combining trust funds with other funds, not notifying the client of receipt of the funds, not maintaining complete records of the funds or providing an accounting to the client, and not paying funds to the client promptly.

Section 6091 of the Business and Professions Code requires the State Bar to investigate complaints of attorney misuse of client funds. The purpose of the investigation is to determine if sufficient evidence or reasonable cause exists to believe that a member has violated any provision of the State Bar Act or the Rules of Professional Conduct.

Since 1983, the State Bar's goal has been to complete the investigation of complaints against members within six months after they are filed. Chapter 2 of the Statutes of 1986, which added Section 6140.2 to the Business and Professions Code, required the State Bar to set as a goal by December 31, 1987, the improvement of its disciplinary system so that it would dismiss complaints, admonish attorneys, or file formal charges within six months. According to the State Bar, these actions constitute the resolution of complaints. Further, Chapter 475 of the Statutes of 1986, which added Section 6094.5 to the Business and Professions Code, required the State Bar to adopt a policy of completing investigations within six months after clients file complaints and to report to the Supreme Court of California and to the Legislature by March 31 of each year on its progress in complying with the policy.

The State Bar Has Not Always  
Met Its Processing Goal

From January 1, 1984, through December 31, 1986, the State Bar did not always meet its six-month goal for processing complaints, and it sometimes delayed processing complaints for substantial periods of time. For 2,758 complaints filed during that period alleging that attorneys misused their clients' trust funds, the State Bar did not resolve 1,494 (54 percent) within the six-month goal. The State Bar resolved 962 of the complaints within six months, but as of September 30, 1987, 302 complaints that had been open for more than six months were not yet resolved. For 104 of the 2,758 complaints, the State Bar filed formal charges, or the accused attorneys admitted they misused their clients' funds. The following table summarizes the time required by the State Bar to process the 2,758 complaints.

TABLE 1  
**PROCESSING TIME FOR INVESTIGATING COMPLAINTS  
OPENED BETWEEN JANUARY 1, 1984 AND DECEMBER 31, 1986**

<u>Year Complaint Filed</u>	<u>Time for Completing Investigations</u>		<u>Investigations Not Completed as of September 30, 1987</u>	<u>Total</u>
	<u>6 Months or Less</u>	<u>More Than 6 Months</u>	<u>More Than 6 Months</u>	
1984	257	655	14	926
1985	329	453	60	842
1986	<u>376</u>	<u>386</u>	<u>228</u>	<u>990</u>
Total	<u>962</u>	<u>1,494</u>	<u>302</u>	<u>2,758*</u>

\* The total does not include two complaints that reached the review stage because the State Bar could not provide the dates that these investigations were completed.

Source: The State Bar of California

The files for a random sample of 131 of these complaints indicate that the State Bar did not perform any work to resolve 64 (49 percent) of the complaints for at least 90 consecutive days. In addition, the State Bar did not perform any work for at least 180 consecutive days on 40 of the 131 complaints, and the file for one of those complaints showed no work for almost one and one-half years.

Not all complaints result in the discipline of attorneys: the State Bar may dismiss complaints when the evidence is insufficient to prove that attorneys have misused their clients' funds. If the State Bar receives more than one complaint against an attorney, it

may consolidate the complaints into a case for action against an attorney and may delay processing one or more of the complaints in the case while processing others. However, when unconsolidated complaints are not resolved within the State Bar's six-month goal, the public may retain attorneys whom the State Bar could have disciplined earlier.

Delays in processing complaints also prevent the public from being informed about attorneys accused of misusing clients' funds. Before September 1985, the State Bar could not inform the public that it was investigating allegations or complaints against attorneys until it recommended that the attorneys be disciplined. Since that time, however, the State Bar responds to letters or telephone calls about complaints that it is investigating if it has filed formal charges against an attorney. Therefore, if the State Bar does not resolve complaints promptly, it prolongs the time that the public is uninformed about complaints pending against attorneys. This, in turn, prevents those who would consider retaining these attorneys for legal services from making fully informed decisions.

#### Delays Resulting From No Work Being Done

Files for 27 of the complaints in our sample on which the State Bar did no work for at least 90 consecutive days indicate that the complaints had not yet been resolved. The delays caused by not working on complaints can hinder prompt discipline of attorneys found guilty of misconduct. For example, in one case that we reviewed, out

of four clients who had accused their attorney of misconduct, one accused him of misusing a total of \$1,400. The attorney eventually admitted that he had misused his client's funds, and as a result of that admission, the State Bar recommended that he be suspended from practicing law for three years. However, before the attorney's admission, the files show that no work was done on the complaints for a year. Consequently, although the Supreme Court of California ordered the suspension to become effective on December 26, 1986, the attorney could have been prevented from practicing law one year earlier if the State Bar had processed the complaints against him promptly.

In another case, the State Bar did no work for over four months on the investigation of all five complaints against an attorney accused of misusing over \$6,600 of his clients' funds entrusted to him. The hearing in State Bar court resulted in a recommendation that the attorney be disbarred. The State Bar attorney assigned to prosecute the case in State Bar court believes that the attorney will be prohibited from practicing law by December 1988. However, if the State Bar had resolved the complaints promptly, the attorney could have been disbarred as early as August 1988.

The State Bar indicated that it did not resolve complaints within six months because investigators could not process all of the complaints that they were assigned. In a memorandum to the executive staff of the State Bar, the deputy executive director of the State Bar said that, by 1983, the State Bar began to face problems in its

disciplinary process because of the increasing number of complaints. She stated that the number of complaints had increased from between 3,894 per year in 1973 to 8,094 per year in 1983 (108 percent) while the active membership of attorneys increased from 37,652 to 79,612 during that time. However, she also said that the resources that the State Bar had available for resolving complaints changed very little during that period. As a result, by 1984, the average caseload for each investigator was about 200 cases, more than three times the number that a consultant reporting to the State Bar believes should be assigned to meet the six-month goal.

#### Attempts To Resolve Processing Delays

During 1985 and 1986, the State Bar received increased funding through increases in fees. In 1986, the Legislature granted \$8 of the \$30 per attorney in increased fees that the State Bar had requested. The State Bar used this smaller increase, as well as supplemental appropriations from reductions in other programs, to add 31 investigators, attorneys, and clerical staff to a new Office of Investigation. It also added 15 other new positions to the discipline process.

Despite these increases in staffing, in a March 3, 1987 memo to the board of governors requesting supplemental funding to add seven additional staff to the Office of Investigation, the deputy executive director stated that progress toward meeting the six-month goal had not

been rapid enough, and she did not anticipate that the State Bar would reach its goal by December 31, 1987. In its March 31, 1988 report to the Supreme Court of California, the State Bar reported that, for 1987, it still had not resolved 1,964 complaints that had been pending for over six months. However, the State Bar did not indicate how many of those complaints alleged that attorneys had misused their clients' funds.

The State Bar does not believe that it can resolve all complaints, including some complaints alleging misuse of clients' funds, within the six-month goal because some cases are complex and require more time to resolve than others. In a November 1987 memorandum, the deputy chief trial counsel established the following criteria for designating cases as complex: (1) cases that include many complaints that have been consolidated or cases in which many clients have filed complaints against an attorney; (2) cases that require excessive documentation to resolve, such as some cases involving the misuse of client funds; (3) cases that are held until other investigations are completed; (4) cases involving other agencies; (5) cases in which investigations were initiated by the State Bar itself rather than by an attorney's client; and (6) cases that are large and require the State Bar to develop expertise in an area of the law.

The memorandum further explains that complex cases cannot reasonably be investigated completely and thoroughly within the six-month goal for resolving complaints. Pending legislation (SB 1498) would extend the maximum time allowed to process such cases from six months to one year. However, while SB 1498 and the November 1987 memorandum would permit the State Bar to designate some cases as complex and, therefore, would permit it to take longer to resolve them, neither designates as complex all cases alleging the misuse of client funds.

#### Lack of a Case Management System

We noted another reason for the State Bar's slowness in resolving complaints: During 1984 through 1986, it did not have a case management system, nor does it have a complete case management system now.

Other organizations that process legal cases use case management systems intended to ensure that staff follow procedures. For example, the Department of Justice and the Disciplinary Board of the Supreme Court of Pennsylvania use case management systems that contain the following six elements: (1) screening processes to separate from other cases those likely to result in discipline; (2) systems for establishing priorities to ensure that the most important cases receive prompt attention; (3) maximum levels of work for each investigative staff member; (4) systems to inform managers of

the status and disposition of cases; (5) systems to analyze the workload and staffing requirements of the entire disciplinary process; and (6) procedures for assigning responsibilities to staff and for monitoring whether staff have met deadlines. We believe that the State Bar's use of these elements of a case management system would assist it to resolve complaints within its six-month goal.

From 1984 through 1986, the State Bar had a system for informing managers of the status of complaints within the Office of Investigation and the Office of Trial Counsel. However, according to the assistant chief trial counsel, the State Bar did not always use information from the system to determine if it was meeting deadlines for processing complaints. Further, the State Bar did not always screen inquiries to ensure that they first processed those inquiries most likely to result in disciplinary action.

Although the State Bar did not have all of the elements of a case management system from 1984 through 1986, it has since improved its management of complaint processing. Since September 1987, the State Bar has improved its system for disclosing to management when complaints are assigned to staff and which milestones have been reached in processing complaints. The State Bar has also established a goal of reducing workloads from approximately 100 complaints to an average of 65 complaints for each investigator. In addition to establishing these elements of a case management system, the State Bar has implemented new procedures for handling inquiries and for reducing the time spent

collecting data by simultaneously requesting information from the clients filing complaints and from attorneys accused of misconduct. The State Bar also has attorneys review inquiries and complaints before they are assigned to staff. However, although the State Bar has improved its system for processing complaints, it still has no procedures for ensuring that staff meet deadlines within the required time during the processing of complaints.

#### CONCLUSION

From 1984 through 1986, the State Bar was slow in processing complaints that attorneys had misused funds entrusted to them. The State Bar did not work on some complaints for substantial periods of time because staff were assigned more complaints to resolve than they could process. Further, the State Bar did not have procedures for ensuring that it met established deadlines for resolving complaints. As a result, the State Bar has not met its six-month goal for processing complaints against attorneys.

While the State Bar has improved its management of complaint processing, it still does not have a complete case management system to ensure that it processes all complaints as quickly as possible. Until the State Bar resolves complaints, the public cannot make informed choices about hiring attorneys who are being investigated by the State Bar, and some attorneys

who are guilty of misconduct will not be prohibited promptly from practicing law.

#### RECOMMENDATIONS

To ensure that the State Bar does not delay processing complaints against attorneys, the State Bar should take the following actions:

- Set specific deadlines for processing complaints alleging misuse of clients' trust funds; and
- Continue to implement a case management system to monitor the processing of complaints.

II

THE STATE BAR OF CALIFORNIA COULD HAVE DONE MORE  
TO ENSURE THAT POTENTIAL CLAIMANTS FILED FOR  
REIMBURSEMENT FROM THE CLIENT SECURITY FUND

The State Bar has not referred to the Client Security Fund (fund) some potential clients whose attorneys have misused trust funds. We reviewed 48 claims for reimbursement and found that, out of the 12 claimants that the fund paid, 7 had not filed claims until after their attorneys had already been disciplined. Since the claimants are eligible to file when the State Bar recommends discipline, which was an average of ten months before these 7 claimants filed, the claimants could have been reimbursed ten months earlier.

The board of governors of the State Bar established the fund in 1972 to help mitigate financial losses to clients of dishonest attorneys. Until 1982, the maximum amount clients could recover from the fund was \$25,000. In 1982, the State Bar raised the maximum amount to \$50,000. The State Bar currently assesses members \$25 per year for the fund. In 1987, the fund paid 182 claims totaling approximately \$1,531,863.

Clients whose attorneys have been accused of misusing trust funds are eligible to file claims for reimbursement from the fund. According to the director of the Client Security Fund, the State Bar

generally considers these claims for reimbursement in the order that they are received. Therefore, potential claimants should be informed of their eligibility to file claims as quickly as possible.

To inform the public of the fund's availability, the State Bar distributes to attorneys, libraries, and civic organizations a pamphlet that provides information on the requirements for filing a claim. Although this pamphlet provides public information about the fund, the State Bar does not routinely inform all potential claimants of the fund's availability. Nevertheless, the director of the fund believes that clients who allege that their attorneys have misused funds entrusted to them should be informed of the availability of the fund as soon as possible after they file complaints against their attorneys, thus ensuring that the State Bar will consider their claims promptly.

In our review of the 48 cases in which clients had filed claims, the fund paid 12 of the claims an average of 18.4 months after the attorneys were disciplined, had resigned, or had died. Other states that have similar funds to reimburse clients of attorneys who have misused trust funds paid claims more quickly than California. For example, a client's security fund survey, covering the years from 1984 to 1986 and conducted by the American Bar Association Center for Professional Responsibility, noted that New York's fund paid claims in an average of two months from the date that the attorney was disciplined while New Jersey's paid claims in an average of seven to

If claimants are not advised promptly of the availability of the fund, their claims may be unnecessarily delayed. Moreover, if potential claimants are not advised of the possibility of reimbursement from the fund, they may not receive payments to which they are entitled.

In March and April 1988, the State Bar issued policy directives to managers and staff of the Office of Investigation and the Office of Trial Counsel. These directives require staff to send either applications for reimbursement from the fund or information on how to obtain applications to clients who file complaints alleging that their attorneys have misused trust funds and to clients whose attorneys the State Bar is investigating for alleged misuse of funds.

#### CONCLUSION

The State Bar of California could do more to ensure that it informs clients whose attorneys are accused of misusing trust funds of the availability of the Client Security Fund. Because the State Bar did not routinely inform potential claimants of the availability of the fund, some potential claimants did not file claims, and some who did file might not have received reimbursement as quickly as possible.

RECOMMENDATION

The State Bar of California should inform potential claimants of the availability of the Client Security Fund when they file a formal complaint that an attorney has misused trust funds.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

  
for \_\_\_\_\_  
THOMAS W. HAYES  
Auditor General

Date: June 20, 1988

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## APPENDIX A

### THE DISCIPLINE PROCESS OF THE STATE BAR OF CALIFORNIA

Section 6076 of the Business and Professions Code (part of the State Bar Act) provides that the board of governors of the State Bar of California (State Bar), with the approval of the Supreme Court of California, may formulate and enforce rules of professional conduct for all members of the State Bar. The board of governors enacted the Rules of Professional Conduct, which are incorporated in the State Bar Act.

Rule 8-101 of the Rules of Professional Conduct states how members must handle funds entrusted to them. The rule requires that attorneys receiving funds to be held for the benefit of their clients promptly notify their clients of the receipt of the funds. As soon as attorneys receive a client's funds, they must clearly identify the funds as belonging to the client and place the funds in a bank account identified as a trust account. They must also maintain a complete accounting record of client trust funds and preserve those records for at least five years after final disbursement of the funds. In addition, upon the request of a client, attorneys must promptly return all funds held in trust for the client.

Rule 8-101 states that attorneys may not commingle any of their own funds or funds of their firm with the funds in their clients' trust account. Any failure to comply with Rule 8-101 constitutes a misuse of client trust funds.

Section 6086 of the Business and Professions Code provides the board of governors with the authority to create rules and procedures for handling complaints against members of the State Bar. The board of governors enacted the State Bar's Rules of Procedure to facilitate and govern proceedings conducted by the State Bar against attorneys who may have committed acts of professional misconduct.

The State Bar may initiate investigations into the practices of attorneys at any time. Section 6091 of the Business and Professions Code requires the State Bar to investigate complaints alleging that attorneys have mishandled trust funds to determine whether reasonable cause exists to believe that an attorney has violated any of the provisions of the State Bar Act or the Rules of Professional Conduct.

If the State Bar concludes that the case lacks legal grounds for action or sufficient proof to support further disciplinary proceedings, it may terminate its investigation and must notify the complainant that it has done so. However, if the State Bar determines that reasonable cause exists to prosecute an attorney for violations of

any of the provisions of the State Bar Act or Rules of Professional Conduct, it issues a "notice to show cause," which outlines the State Bar's charges against the attorney.

While the State Bar has no specific definition of the term reasonable cause, it must consider many factors when making a decision to file charges against an attorney. The primary responsibility of the State Bar in filing formal disciplinary charges is to determine whether sufficient evidence exists to support a finding that an attorney intentionally violated the Rules of Professional Conduct. The State Bar will file charges of misconduct only if the following four requirements are met: (1) based on a complete investigation and thorough consideration of all pertinent data readily available, the State Bar is satisfied that the attorney is guilty of professional misconduct; (2) legally sufficient evidence exists to support the charge that the attorney committed the act; (3) the State Bar believes that an objective hearing will conclude that the attorney has committed the act; and (4) the evidence that the State Bar presents at a hearing will result in finding the attorney guilty of misconduct even after the State Bar court has considered the most plausible defense the attorney can raise.

The State Bar's disciplinary system is designed to protect the public from unethical attorneys. Section 6078 of the Business and Professions Code authorizes the State Bar to discipline attorneys who violate the Rules of Professional Conduct by reprimanding them or recommending to the Supreme Court of California that they be disbarred or suspended from practice.

#### Overview of Case Processing

The public may contact the State Bar with inquiries and complaints in person, by telephone, or by mail. The public may also call the State Bar's membership records department to inquire about an attorney's discipline record, including information on any charges currently pending against attorneys.

When the public contacts the State Bar with allegations of attorney misconduct, the Office of Trial Counsel determines whether the matters should be handled by providing information or by opening a complaint. If the allegations may lead to discipline, the Office of Trial Counsel prepares an in-depth analysis of the case, prepares complaint files, and forwards these files to the Office of Investigation for further processing.

Upon receiving the complaints, the Office of Investigation assigns investigators to gather the necessary materials and conduct interviews to determine whether allegations of misconduct are justified. A legal advisor assists investigators and provides legal review.

For complaints involving the misuse of client trust funds, the Office of Investigation may obtain copies of contracts between attorneys and clients, statements of the trust accounts, cancelled checks, and witness testimony. It reviews and analyzes these data to verify that clients had hired the attorneys who are accused of misconduct, to determine if trust accounts had fallen below required levels, and to determine if attorneys had misappropriated their clients' funds. During the investigation of complaints, the State Bar is statutorily entitled to audit the trust funds of attorneys suspected of misconduct and has retained accounting firms to conduct two audits of attorneys. However, the State Bar believes that the results of these audits were disappointing because they cost too much and did not provide information that could be used in preparing the cases for discipline against the attorneys.

If the Office of Investigation determines that complaints are justified, it prepares case summaries and forwards them to the Office of Trial Counsel for prosecution. The Office of Trial Counsel reviews the summaries to determine if reasonable cause exists for prosecution before the State Bar court.

If the chief trial counsel determines that sufficient evidence exists to support findings that attorneys intentionally committed acts of professional misconduct, the Office of Trial Counsel prepares the formal charges known as "notices to show cause." These notices are public records, and they state the case which the State Bar intends to prove in a disciplinary hearing before the State Bar court.

The hearing department of the State Bar court conducts the formal proceedings. Referees of the State Bar court conduct hearings during which both the State Bar and the defendant attorney may present evidence. The referees may recommend that attorneys whose misconduct is not intentional and does not involve loss of money be warned that their conduct was inappropriate. In more serious cases, referees may recommend that attorneys be notified that their conduct has violated the State Bar Act, or they may recommend that the attorneys be temporarily or permanently prohibited from practicing law. The referees may also recommend that the complaints be dismissed if they believe that insufficient evidence exists to prove that attorneys are guilty of misconduct.

The State Bar court's review department, which reviews all final decisions of the hearing department, is composed of 12 attorney and 6 nonattorney volunteers. The department may accept or change the hearing panel's recommendations, admonish the attorneys, issue reproofs, or recommend that the Supreme Court of California suspend or disbar attorneys.

## APPENDIX B

### THE NUMBER OF INQUIRIES AND COMPLAINTS RECEIVED BY THE STATE BAR OF CALIFORNIA AND THE TIME REQUIRED TO PROCESS COMPLAINTS

As shown in Table B-1, the State Bar received 23,183 inquiries in 1987. An estimated 2,777 of these inquiries pertained to allegations that attorneys had misused trust funds. The State Bar kept information about inquiries manually and did not electronically record the number of inquiries about misuse of funds by attorneys until September 1987. Therefore, we used the 12 percent rate for those types of inquiries that the State Bar received about fund misuse from September 11, 1987, through December 31, 1987, to estimate the proportion of those types of inquiries received from January 1, 1987, through September 11, 1987.

TABLE B-1

### TOTAL NUMBER OF INQUIRIES RECEIVED IN 1987 AND ESTIMATED PERCENTAGE ALLEGING ATTORNEY MISUSE OF TRUST FUNDS

<u>Period</u>	<u>Total Inquiries</u>	<u>Inquiries About Trust Fund Violations</u>	<u>Percentage of Inquiries Alleging Misuse of Client Trust Funds</u>
January 1 through September 10, 1987	18,721	2,248*	12
September 11 through December 31, 1987	<u>4,462</u>	<u>529</u>	12
Total for 1987	<u>23,183</u>	<u>2,777</u>	12

\* We estimated the number of inquiries related to violations of trust funds as 12 percent of the total number of inquiries that the State Bar received from January 1, 1987, through September 10, 1987.

Source: State Bar computer records of inquiries

Table B-2 shows that the 23,183 inquiries that the State Bar received in 1987 resulted in 6,259 complaints while the 2,777 inquiries about fund misuse by attorneys resulted in 1,111 complaints.

TABLE B-2

TOTAL NUMBER OF INQUIRIES RECEIVED BY THE STATE BAR  
BETWEEN SEPTEMBER 9, 1987 AND DECEMBER 31, 1987 AND  
THE ESTIMATED NUMBER THAT WERE LATER OPENED AS COMPLAINTS

	<u>Initial Inquiries</u>	<u>Inquiries Later Opened as Complaints</u>	<u>Percentage of Inquiries Later Opened as Complaints</u>
All Initial Inquiries	23,183	6,259	27
Inquiries Alleging Misuse of Trust Funds	2,777	1,111	40

Source: The State Bar computer records listing complaints and inquiries

Table B-3 shows that the State Bar opened 27,573 complaints against attorneys during the period January 1, 1984, through December 31, 1986. It also shows that about 10 percent, or 2,766, of those complaints were about the misuse of trust funds by attorneys.

**TABLE B-3**

**NUMBER OF COMPLAINTS OPENED AND THE PERCENT  
ALLEGING ATTORNEY MISUSE OF CLIENT TRUST FUNDS  
CALENDAR YEARS 1984 THROUGH 1986**

<u>Year</u>	<u>Total Number of Cases Opened</u>	<u>Number of Cases Alleging Misuse of Trust Funds</u>	<u>Percentage of Cases Alleging Misuse of Trust Funds</u>
1984	8,980	930	10.4
1985	9,000	845	9.4
1986	<u>9,593</u>	<u>991</u>	10.3
Total	<u>27,573</u>	<u>2,766</u>	10.0

Source: The State Bar computer records of complaints received for calendar years 1984 through 1986

Table B-4 shows the average number of days that elapse between the stages of processing disciplinary cases at the State Bar court. The table shows that the average time from the date that a case is filed in State Bar court to the date that the Supreme Court of California orders discipline for an attorney is 640 days.

**TABLE B-4**  
**AVERAGE NUMBER OF CALENDAR DAYS BETWEEN  
PROCESSING STAGES AT THE STATE BAR COURT**

<u>Processing Stages</u>	<u>Average Number of Calendar Days Between Stages</u>
Case Filed at the State Bar Court to Mandatory Settlement Conference	161
Mandatory Settlement Conference to Hearing	92
Hearing to Filing of Hearing Decision	75
Filing of Hearing Decision to Review Department Hearing	111
Review Department Hearing to Filing of Review Department Decision	28
Filing of Review Department Decision to Implementation of Decision	63
Review Department Decision to Supreme Court Decision	<u>110</u>
Total Time From Filing the Case With the State Bar Court to a Final Decision by the Supreme Court	<u>640</u>

Source: Computer records of cases filed at State Bar court from January 1, 1984, through September 22, 1987

# THE STATE BAR OF CALIFORNIA

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June 16, 1988

Thomas W. Hayes  
Auditor General  
State of California  
660 J Street, Suite 300  
Sacramento, California 95814

Dear Mr. Hayes:

Thank you for the opportunity to comment. Your report looks at a limited number of cases from 1984 through 1986 and makes three recommendations based on that review, i.e., that the State Bar continue to implement a case-management system to monitor the processing of complaints, set specific datelines for processing complaints alleging misuse of clients' trust funds, and inform clients of the availability of the Client Security Fund when they file complaints alleging that attorneys have misused their funds. I would like to address the general thrust of your findings and offer additional comments on your specific recommendations.

## Overview

In a sense, the report concerns history rather than the present. The report acknowledges that the State Bar has made substantial and significant improvements in the disciplinary system since 1986. The report correctly states that the State Bar has already "established a policy to notify potential complainants who complain that their attorneys have misused trust funds of the establishment of the Client Security Fund." As I will mention below, the State Bar has and is implementing an extensive outreach program, which goes further than the recommendation.

Thomas W. Hayes  
June 16, 1988  
Page 2

You can be assured that complaints alleging misuse of the clients' trust funds have a high priority in the current disciplinary system. In fact, an investigative case-management system containing the six elements suggested in the report is already in place and functioning<sup>①</sup>\*However, no matter how good that system is today, it can always be improved and, accordingly, we are continually evaluating its efficiency and effectiveness.

More importantly, notwithstanding the sophistication of the system, additional resources represented by people and technology are essential to the ongoing and complete success we wish to achieve with respect to screening and investigating complaints, including those involving allegations of trust fund violations. As you know, to address this resource issue, the State Bar is sponsoring Assembly Bill 4391 (Brown) and supporting Senate Bill 1498 (Presley) which are pending for legislative enactment this session, and which will greatly augment our ability to implement programs aimed at enhancing our discipline efforts.

Specifically, I would like to bring the following to your attention:

Client Security Fund

We are committed to a policy of making the Client Security Fund responsive to the needs of the public as it was designed to be. Disciplinary enforcement staff are responsible for analyzing incoming and existing complaints and where misappropriation appears to be a possibility or becomes a possibility, they notify complainants about the fund. These are the standard procedures.<sup>②</sup>

The impact of these procedures has already been experienced in an 80 percent increase in the first five months of 1988 of new claims filed with the fund over new claims filed during the same period in 1987.

The Client Security Fund staff is also completing steps for increasing publicity about the program. They will be issuing press releases on particular noteworthy claims to increase public awareness. A one-page information sheet about the fund will soon be available for distribution with all disciplinary complaint forms that presently go out to prospective complainants. An additional informational sheet on how the fund operates is also being prepared and will be furnished to applicants so they will better understand how their claims will be processed, the nature of their procedural rights and duties and what the time frame is for the processing of their claims.

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\*The Office of the Auditor General's comments on specific points contained in this response appear on page 37.

Mr. Thomas W. Hayes  
June 16, 1988  
Page 3

Case Management and Deadlines for Processing Complaints  
Alleging Misuse of Clients' Trust Funds

We appreciate the report's recognition that since 1986 the State Bar has improved its management of complaint processing, particularly in the following respects:

- o Implementing a computerized management information system
- o Reorganizing the process for receiving and screening of complaints
- o Establishing workload goals
- o Reducing the time spent collecting data

The screening process includes procedures for establishing priorities to ensure that the most important cases receive prompt attention at the outset. Priority One is the top priority and includes alleged misuse of trust funds. Additionally, procedures require that assigned priorities be regularly reviewed throughout the investigation. For example, an attorney's alleged failure to return client phone calls (a Priority Four) may turn out, upon State Bar investigation, to involve a misappropriation of which the client has no knowledge, in which case it would become a Priority One.

Current procedures combine appropriate computer reports with the requirement that managers meet regularly, one-on-one, and weekly in a group with their respective team members to review such matters as cases pending, age of case by date received, status and deadlines, assignments and workload, resolution rates, nature and scope of investigation, complexity and the like.

Although it is incumbent on the State Bar to ensure that staff follow procedures, we do not believe that additional procedures alone will ensure that staff meets deadlines within the required time during the processing of complaints. Full administration of the system has been hampered by such factors as the volume of cases coming into the system and the increased number of complex cases requiring more time for investigations, the introduction of a new system with largely new personnel, natural limitations on human ability to absorb and implement constant change, financial constraints on adding resources and reducing average caseloads for investigators and trial counsel, and the breadth of management requirements imposed on a limited number of persons.

Thomas W. Hayes  
June 16, 1988  
Page 4

Ensuring that staff knows of and adheres to the management system is not enough without the additional resources necessary for a timely, efficient and effective lawyer discipline system. We don't lack procedures; we do lack personnel. We hope that our ongoing determination to get the job done, coupled with the discipline enhancement contained in Assembly Bill 4391 (Brown) and Senate Bill 1498 (Presley) currently before the Legislature, will enable the system to operate in a manner and with the results that we can all take pride in.

Very truly yours,

  
P. Terry Anderlini  
President

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**THE OFFICE OF THE AUDITOR GENERAL'S COMMENTS  
ON THE RESPONSE OF THE STATE BAR OF CALIFORNIA**

- (1) As of the completion of our review, the State Bar had implemented five of the six elements of a case management system. However, the State Bar is currently in the process of developing procedures to ensure that staff meet deadlines within the required time during the processing of complaints.
- (2) As we point out on page 22 of the report, the State Bar issued policy directives in March and April 1988 that require staff to notify clients alleging that their attorneys have misused trust funds of the availability of the Client Security Fund.

cc: Members of the Legislature  
Office of the Governor  
Office of the Lieutenant Governor  
State Controller  
Legislative Analyst  
Assembly Office of Research  
Senate Office of Research  
Assembly Majority/Minority Consultants  
Senate Majority/Minority Consultants  
Capitol Press Corps

eight months from that date.<sup>2</sup> Staff of the funds in both states said that claimants usually file claims early in the discipline process.

If claimants are to file early in the discipline process, they must be informed of the fund's availability as soon as possible. In our review of the 12 cases that California's fund paid, the State Bar had informed only 2 of these 12 claimants of the availability of the fund. Three of the 12 claimants filed for reimbursement only after learning of the fund from other sources such as other attorneys.

In the remaining 7 of the 12 claims that the fund paid, clients filed claims after the State Bar's recommendation of discipline had become effective or the attorneys had died or resigned. However, the State Bar had not informed any of these 7 claimants of the availability of the fund. In 5 of the 7 cases, claimants found out about the availability of the fund from other attorneys. One claimant said he knew about the fund but could not say how, and one found out from a friend. Because the claimants did not file claims until after the discipline became effective, the State Bar paid their claims an average of 24 months after the attorneys had been disciplined.

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<sup>2</sup>The study did not provide the number of cases used to compute averages.